

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
Office of Conservation and Coastal Lands
Honolulu, Hawaii

February 11, 2010

**Board of Land and
Natural Resources
State of Hawaii
Honolulu, Hawaii**

REGARDING: Proposed MEMORANDUM OF UNDERSTANDING between THE STATE OF HAWAII, Department of Land and Natural Resources, by its Board of Land and Natural Resources and KYO-YA HOTELS & RESORTS, LP, a Delaware Limited Partnership to help Fund the Waikiki Beach Maintenance Project

The Department of Land and Natural Resources (DLNR) is proposing to conduct beach maintenance work at Waikiki Beach. The project consists of the re-nourishment of sand to a portion of Waikiki Beach from the Royal Hawaiian groin to Kuhio Beach (**Attachment A**). The project would retrieve approximately 24,000 cubic yards of sand from approximately 2,000 yards offshore. The sand would be pumped to the beach via a pipeline. The lower range of the estimated project cost is approximately \$2.5 M. A draft environmental assessment has been prepared for the project and will be processed shortly, along with all necessary permits. Construction of this project is slated to begin at the end of this calendar year.

This CIP project was approved as part of the FY '09 budget. The legislature appropriated \$1.5 M of funds from the Special Beach Fund and also identified additional sources of money from the private sector and the Hawaii Tourism Authority.

Kyo-ya Hotels is currently offering to contribute \$500,000 towards the project. A introductory presentation was made to the Hawaii Tourism Authority Board in November of 2009. Staff is hopeful that HTA will contribute a small amount of funds to the beach maintenance effort.

The proposed Memorandum of Understanding (MOU) for \$500,000 is attached as **Attachment B**. The Department of the Attorney General is currently reviewing the MOU. The proposed donor, Kyo-ya Hotels, is in agreement with the proposed language of the MOU.

**Board of Land and
Natural Resources**

RECOMMEDATION:

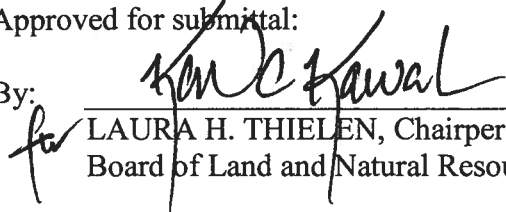
That the Board of Land and Natural Resources (BLNR) approve the Department entering into an MOU for subject project, and authorize the Chairperson to finalize and sign the MOU subject to the approval, as to form, by the Department of the Attorney General.

Respectfully submitted,


Sam Lemmo
Administrator

Approved for submittal:

By:


LAURA H. THIELEN, Chairperson
Board of Land and Natural Resources

Project Area Waikiki Beach, Oahu



ATTACHMENT A

MEMORANDUM OF UNDERSTANDING
(WAIKIKI BEACH MAINTENANCE PROJECT)

THIS MEMORANDUM OF UNDERSTANDING ("Memorandum") is entered into as of _____, 2010, by and between THE STATE OF HAWAII, Department of Land and Natural Resources, by its Board of Land and Natural Resources (the "State"), and KYO-YA HOTELS & RESORTS, LP, a Delaware Limited Partnership ("Kyo-ya").

RECITALS

A. The State, through the Department of Land and Natural Resources, Office of Conservation and Coastal Lands, is undertaking a project for the maintenance and management of sand at Waikiki Beach, Honolulu, Hawaii, located between the Royal Hawaiian Hotel and the Sheraton Moana (the "Project"). It will include, but not be limited to, the periodic identification, mapping and analysis of offshore deposits, and periodic beach nourishment, which shall include the addition of up to 24,000 cubic yards of sand to this portion of Waikiki Beach. One of the goals of the Project is the seaward widening of the dry beach fronting the Moana Surfrider Hotel by up to forty feet (40') as compared with the width of such dry beach existing as of December 2009.

B. The State will engage a third-party consultant to (i) obtain an approved environmental assessment for periodic beach nourishment and its supporting activities, and (ii) complete the design, permitting and preparation of construction documents for beach nourishment at Waikiki Beach. The complete scope of services to be performed by the third-party consultant is as described in Exhibit 1 attached hereto.

C. The State estimates that it will advertise for bidding on the Project in August 2010, and that the Project construction will commence in or around _____ and finish in or around _____.

D. Kyo-ya intends to redevelop that certain project located at 2365 Kalakaua Avenue, Honolulu, Hawaii, known as the Diamond Head Tower at the Moana Surfrider Hotel (the "DHT Redevelopment"), which project, together with the redevelopment of the Princess Kaiulani Hotel, is more particularly described in that certain Draft Environmental Impact Statement dated July, 2009 (the "DEIS"), as to which notice was published on September 8, 2009, by the State of Hawaii, Office of Environmental Quality Control.

E. As set forth in the DEIS, in connection with the DHT Redevelopment, Kyo-ya is prepared to provide a public benefit in the form of contributing \$500,000 to the State toward the costs of the Project. The Project, however, is not a part of the DHT Redevelopment.

F. The State and Kyo-ya desire to memorialize their understanding of the terms and conditions upon which Kyo-ya will provide the aforesaid contribution for the Project.

ATTACHMENT

B

Memorandum of Understanding
Waikiki Beach Maintenance

AGREEMENT

NOW, THEREFORE, the State and Kyo-ya hereby agree as follows:

1. Contribution. Kyo-ya agrees to contribute to the State FIVE HUNDRED THOUSAND AND NO/100 DOLLARS (\$500,000.00) (the "Kyo-ya Contribution") toward the costs of the Project, upon and subject to the terms and conditions set forth in this Memorandum, including the possible adjustment of said amount as provided in Section 7 hereinbelow.

2. Use of Funds. The State agrees that the funding provided by Kyo-ya shall be used solely for nourishment of the littoral cell extending between Kūhiō Beach and the Royal Hawaiian Hotel (including the area fronting the Diamond Head Tower of the Moana Surfrider).

3. Seaward Widening of the Beach. The State intends to enter into a contract with a duly licensed contractor (the "Project Contractor") to complete construction of the Project in accordance with the Project plans and specifications, (the "Plans and Specifications") having been approved in writing by Kyo-ya, and in accordance with the timeline attached hereto as Exhibit 2. Following Kyo-ya's approval of the Plans and Specifications, the State shall not amend the Plans and Specifications so as to materially and adversely affect the widening of the dry beach fronting the Moana Surfrider Hotel without the prior written approval of Kyo-ya. Without limitation to the foregoing, the State agrees that upon completion of construction, the Project will result in the seaward widening of the dry beach in accordance with the project plans and specifications. Based upon the intended addition of up to 24,000 cubic yards of sand, the dry beach fronting the Moana Surfrider Hotel would be widened by up to forty feet (40'), as compared with the width of such dry beach existing as of December, 2009.

4. Certification of Shoreline. The State further agrees that upon completion of construction of the Project, Kyo-ya shall have the right to apply to the State of Hawaii to certify all or any portion of the shoreline between Kūhiō Beach and the Waikiki Beach area located Diamond Head of the Royal Hawaiian Hotel, including the shoreline fronting the Moana Surfrider Hotel, in accordance with Chapter 205A of the Hawaii Revised Statutes, and Title 13, Subtitle 10, Chapter 222 of the Hawaii Administrative Rules.

5. Conditions to Funding. Kyo-ya's obligation to deposit the Kyo-ya Contribution (as defined in Section 6 hereinbelow) shall be conditioned upon the satisfaction in all material respects of each of the following:

a. Kyo-ya shall have reviewed and approved in writing the Plans and Specifications.

b. Kyo-ya shall have received a Special Management Area Use permit from the City and County of Honolulu, Department of Planning and Permitting for the DHT Redevelopment. In the event the State is prepared to advertise the Project for bidding prior to the time that Kyo-ya receives such Special Management Area Use permit, the State may deliver a written request to Kyo-ya to waive this condition, and Kyo-ya may, but shall not be obligated to, agree to such a waiver.

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c. The State shall have received all permits and approvals necessary for the Project including, but not limited to, those permits and approvals referred to in the environmental assessment for the Waikiki Beach Maintenance Project.

d. The State, by its Chairperson of the Board of Land and Natural Resources, shall have certified to Kyo-ya that the State has sufficient funds (including the contribution to be made by Kyo-ya as described herein) to complete the Project in accordance with the draft project plans and specifications as illustrated in the environmental assessment for the Waikiki Beach Maintenance Project.

e. The State shall have furnished Kyo-ya with a copy of all relevant documents relating to the Project. Kyo-ya may make periodic inquiries to the status of the Project.

6. Disbursement. The State requires that all money to be used for construction of the Project be available for use when it advertises for bids. The State shall provide Kyo-ya with not less than three weeks' prior written notice of the advertising date. Kyo-ya shall ensure that the funding is transferred to the State no less than one day before the designated advertising date in the form of a check made payable to the State Department of Land and Natural Resources. Kyo-ya may periodically contact the State prior to receiving the aforesaid written notice to find out the current month being targeted for advertising. The funds deposited by Kyo-ya pursuant to this Agreement shall be held in a separate account and shall not be commingled with other funds of the State.

7. Bid Opening. Not later than five (5) working days following the date of bid opening, the State shall notify Kyo-ya in writing as to whether the funds available to the State to cover all Project costs are sufficient for the State to make an award to the lowest qualified bidder. If the bid opening reveals that the State would have insufficient funds to complete the Project, the State shall deliver to Kyo-ya a written proposal to make reasonable reductions to the scope of work of the Project so that the funds available to the State would be sufficient to cover all costs of the Project, as so modified. Upon and subject to Kyo-ya giving its written approval of such a reduction in the scope of work, the Kyo-ya Contribution shall be reduced to an amount equal to (a) the original Kyo-ya Contribution set forth in Section 1 hereinabove, multiplied by (b) the quotient of (i) the total cubic yards of sand being added to the Project area following the aforesaid reduction in the scope of work, divided by (ii) 24,000 cubic yards of sand. The excess of the original Kyo-ya Contribution over the reduced Kyo-ya Contribution shall be promptly returned to Kyo-ya.

8. State's Disbursement of Money to the Contractor. The State shall fund each such progress payment by drawing down on the accounts of all parties who are contributing to the total Project costs, in direct proportion to their original contributions.

9. Return of Funds. Any unused funds comprising the Kyo-ya Contribution shall be returned to Kyo-ya as set forth hereinbelow:

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a. If for any reason the State is unable to award the Project, the State shall provide written notification to Kyo-ya and shall promptly return the entire Kyo-ya Contribution to Kyo-ya.

b. If the bid opening reveals that the State has insufficient funding to initiate the Project, and the State and Kyo-ya are unable to agree upon a reduction in the scope of work, the State shall promptly return the entire Kyo-ya Contribution to Kyo-ya.

c. If for any reason the Project is awarded but there are circumstances which arise which prevent or otherwise make impracticable its completion, the State shall promptly return any unused portion of the Kyo-ya Contribution to Kyo-ya.

d. If after the State's final acceptance of the Project and the State's final payment to Contractor there are any unused funds, the State shall promptly return any unused portion of the Kyo-ya Contribution to Kyo-ya.

10. Responsibility for Permits and Approvals. The State shall be solely responsible for obtaining all permits and approvals required for and complying with all laws applicable to the Project.

11. No Waiver of Beach Agreement. Nothing contained in this Memorandum shall constitute a waiver or release by any party hereto of any benefits, obligations, claims, rights or terms of that certain Waikiki Beach Reclamation Main Agreement dated October 19, 1928, as amended by that certain supplementary agreement entered into on or around July 5, 1929, as further amended by that certain Surfdrider-Royal Hawaiian Section Beach Agreement dated May 28, 1965, filed with the Assistant Registrar of the Land Court of the State of Hawaii as Document No. 378388, and also recorded in the Bureau of Conveyances of the State of Hawaii in Liber 5219, Page 18, as amended.

12. Miscellaneous Provisions.

12.1 Partial Invalidity. If any provision hereof or the application thereof to any person or circumstance shall to any extent be invalid or enforceable, the remaining provisions hereof, or the application of such provision to persons or circumstances other than those as to which it is invalid or unenforceable, shall not be affected thereby.

12.2 Governing Law. This Memorandum shall be construed, interpreted and applied in accordance with the internal laws of the State of Hawaii without giving effect to doctrines relating to conflicts of laws.

12.3 No Third Party Beneficiaries. No term or provision of this Memorandum is intended to be, or shall it be, for the benefit of any person, firm, organization or corporation not a party hereto, and no such other person, firm, organization or corporation shall have any right or cause of action hereunder.

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12.4 No Partnership. Any intention to create a joint venture or partnership relation between the parties hereto is hereby expressly disclaimed.

12.5 Modifications. This Memorandum may not be modified except by a written agreement signed by both parties.

12.6 Binding on and Inuring to Benefit of Successors and Assigns. This Memorandum shall be binding upon, and shall inure to the benefit of the parties, and their respective successors and assigns.

12.7 Notices. All notices and other communications in connection with this Memorandum shall be in writing and shall be deemed to have been received by a party when actually received in the case of hand delivery, facsimile transmission or e-mail to the address, or internationally recognized courier service or three (3) days after being sent by United States mail, as the case may be, of the State and Kyo-ya as shown below. Any refusal to accept delivery of a written notice delivered or mailed to the addresses set forth below, or the non-receipt of any facsimile transmission sent to the facsimile number set forth in hereinbelow resulting from the non-operation of the receiving party's facsimile equipment, shall be deemed to be receipt of such notice for the purposes of this Agreement.

State:

Facsimile No.: _____

Kyo-ya:

Kyo-ya Hotels & Resorts, LP
Sheraton Waikiki Hotel, Second Floor
2255 Kalakaua Avenue
Honolulu, Hawaii 96815

Facsimile No.: (808) 923-0892

12.8 Counterparts; Facsimile Execution. The parties hereto agree that this instrument may be executed in counterparts, each of which shall be deemed an original, and said counterparts shall together constitute one and the same agreement, binding upon all of the parties hereto, notwithstanding that all of the parties are not signatory to the original or the same counterparts. For all purposes, including, without limitation, recordation, filing and delivery of this instrument, duplicate unexecuted and unacknowledged pages of the counterparts may be discarded and the remaining pages assembled as one document. An executed counterpart of this instrument transmitted and received by facsimile shall be deemed for all purposes to be an original, executed counterpart hereof.

Memorandum of Understanding
Waikiki Beach Maintenance

IN WITNESS WHEREOF, the State and Kyo-ya have executed this Memorandum as of the date first above written.

Approval as to Form:

By _____ Date _____
Deputy Attorney General

Kyo-ya:

KYO-YA HOTELS & RESORTS, LP,
a Delaware limited partnership

By _____
Name:
Title:

STATE OF HAWAII
BOARD OF LAND AND NATURAL RESOURCES

By _____ Date _____
Laura H. Thielen
Chairperson

Approved by the Board of Land and Natural Resources
at its meeting held on _____



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Beach Restoration and Maintenance at Waikiki Beach

I. Background

The existing beach extends approximately 1,700 feet from the western end of the Kuhio Beach crib wall sand retention system to the Royal Hawaiian Hotel groin. It is narrow, with a typical dry beach width of about 50 feet, and is composed primarily of fine to medium calcareous sand, much of which has been imported from various sources outside of Waikiki. There is no substantial widening of the beach adjacent to the groins at either end, indicating the primary cause of changes to the beach appears to be on-shore-offshore sand transport.

In addition to the resulting loss of beach width, the ongoing process of additional sand fill migrating offshore is of considerable concern because of its environmental impact on benthic flora and fauna, the filling of tako holes, changes to bottom feeding fish habitats, and its impact on wave breaks and surf sites.

Beach restoration using nearshore sand sources will minimize the environmental impact of on-shore-offshore sand transport, but is not considered to be a permanent solution. A study done in 2003 estimated that Waikiki beaches have gained less than 5,000 cubic yards since 1951 despite placement of approximately 250,000 cubic yards of sand during that time period.

Since beach restoration is not a permanent solution, the current situation in Waikiki Beach calls for a strategy of regular beach maintenance using nearshore sand as a method of periodic beach restoration. This "recycling" strategy can be an efficient method of maintaining a recreational beach in Waikiki as well as minimizing the environmental effects of sediment brought into the Waikiki marine ecosystem over the last 50 years.

II. Project Description and Objectives

The State Office of Conservation and Coastal Lands (OCCL) desires to replenish sand that has been lost from the beach to the nearshore area. This would be accomplished through a sand maintenance effort at Waikiki Beach that is intended to better manage the sand that has been imported to Waikiki Beach in past beach building efforts. This will include, but not be limited to the periodic identification, mapping, and analysis of offshore sand deposits, extraction of this material, and periodic beach restoration.

In order to support the State's goals, the project has two primary objectives: 1) obtaining an approved EA/EIS for periodic beach restoration and maintenance of Waikiki Beach and its supporting activities, and 2) design, permitting, and the preparation of construction documents for beach restoration and maintenance at Waikiki Beach.

The CONTRACTOR shall work with staff from the OCCL.

III. Scope of Work

To achieve this objective, the CONTRACTOR shall undertake a program of work including, but not limited to the following:

A. PHASE I – ENVIRONMENTAL ASSESSMENT

1. The Environmental Assessment (EA) shall cover periodic beach restoration and maintenance at Waikiki Beach with nearshore sand deposits and all of its supporting activities for a fifteen year period. It shall include, but not be limited to:

- a. Summary of Existing Available Literature

Compilation and review of available environmental and engineering literature on Waikiki Beach to include but not be limited to its history, coastal processes, offshore sand sources, nearshore coastal processes, other related data. Potential sources of

EXHIBIT 1



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literature are the U.S. Army Corps of Engineers, and State agencies (including various departments of the University of Hawaii).

b. Field Investigations to Characterize Sand Borrow Sites

The CONTRACTOR shall, in a joint investigative effort with the OCCL, develop a map establishing the limits within which "nearshore" sand sources to be used in beach restoration can be found.

The CONTRACTOR shall check with the OCCL to determine whether it has particular sand deposits which it wishes to have prioritized. Additional investigations may include (but not be limited to) the following:

- Bathymetry Mapping using available LIDAR data.
- Subbottom Profiling (to measure the thickness of existing sand deposits)
- Vibracore Sampling (used to collect vertical cores of sand deposits for grain size analysis to determine which deposits are potentially suitable for use on the beach)
- Deposit Depth Probing (jet probing of sand depths)

Appropriate Best Management Practices shall be detailed for the types of activities listed above.

c. Evaluation of Sand Recovery Methods

Dredging of thin sand deposits in near shore shallow water is difficult because:

- Different sand deposits may require different dredging methods
- The deposits must be removed from a shallow area with wave action.
- The method of removal must minimize damage to the reef habitat while uncovering the reef.

This effort is further complicated by the fact that the area in question is heavily used for recreational purposes.

In light of the difficulties posed, a significant effort will be placed on researching and evaluating different dredging technologies to determine which are most suitable for the project and its goals.

Technologies which can be used to place sand on the beach while minimizing environmental impacts will also be investigated. Possible options include hydraulic delivery as a sand slurry and use of a recently developed low pressure air technology to "blow" sand through a pipeline.

Best Management Practices shall be established for viable sand recovery method(s).

d. Marine Biological and Water Quality Surveys

A reconnaissance level marine biological and water quality baseline survey will be conducted to identify sensitive resources or areas of concern in the project vicinity. This survey will include descriptions of sensitive biological resources (including coral and reef habitats and marine flora and fauna) and an evaluation of baseline water quality conditions. A review of existing data will be used to supplement site specific investigations. The baseline surveys will be coordinated with staff from NOAA-PIRO, NMFS, Department of Health – Clean Water Branch and DLNR-DAR and OCCL for consistency with relevant state and Federal guidelines.

e. Evaluation of Recreational Uses in the Project Area

It will be necessary to develop a plan which is acceptable to all users of the area. Recreational uses will therefore be identified and the locations of their activity mapped. Possible impacts to these areas of activity will be assessed, with high priority given to the impact on surf sites.



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f. Identification of Environmental Best Management Practices (BMPs)

The minimization of adverse environmental impacts is a very high priority given the high profile location of the study area. Of particular concern is the minimization of water quality impacts (turbidity and suspended solids) both during and post construction.

g. Analysis of Oceanographic Design Parameters

This work is necessary to establish design criteria to be used in the development of the beach layout plan and in the evaluation of its stability. It will involve the evaluation of wave conditions in the nearshore area as well as transport components during typically prevailing conditions, high surf conditions, and possible storm conditions. Existing wave data will be used to develop a representative deepwater wave climate offshore of Waikiki. Results from the field investigations including bathymetric studies and subbottom profiling will be used in conjunction with the information obtained regarding wave conditions and climate to do wave modeling which will facilitate studies of induced current and transport patterns.

h. Functional Beach Restoration and Maintenance Concept Plan

Beach design tasks will include:

- Development of a suitable sand specification and suitability of nearshore sources
- Determination of planned beach width, slope and extent of restoration efforts.
- Recommendations as to the recurring interval recommended for beach restoration and sand volume ranges to be used if the nourishment is done within the recommended interval
- Development of a concept beach plan and profile drawings
- Selection of the sand recovery method(s) to be used

A comprehensive Concept Design Report will be prepared, justified, and submitted to the STATE's OCCL for review/comment as soon as the information is available during the development of the Draft Environmental Assessment.

i. Preliminary Consultations and Public Outreach

Any improvements to Waikiki Beach will require cooperation from a number of stakeholders (including, but not limited to: adjacent landowners, beach and water users, Waikiki residents, beach concessionaires, business and community groups such as the Waikiki Improvement Association, Waikiki Residents Association, Waikiki Neighborhood Board, and various State and Federal agencies).

Local stakeholders and government agencies will be consulted to obtain their input with regard to issues and concerns which need to be addressed as well as generalized feedback regarding project acceptance. The CONTRACTOR shall also attempt to determine which permits and approvals will be required and find out what is required to file for those permits.

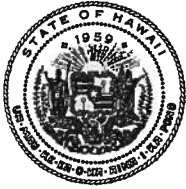
2. Synopsis of Draft EA and Presentation on Project

This will be produced in a printed format for distribution to stakeholders for the purpose of getting preliminary input prior to publication of the Draft EA.

A presentation will also be developed in order to gain input from stakeholders who may request information. The CONTRACTOR will submit both the synopsis and presentation to the STATE OCCL for review/input prior to use.

3. A Draft EA will be produced and published in accordance with Chapter 343 HRS.

- Three (3) copies of the Draft EA shall be submitted to the STATE's OCCL for review and comment.
- The Draft EA shall be revised in response to comments received in preparation for publication.



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Complete the OEQC publication form for The Environmental Notice for submittal to OEQC. Submit the form, along with the appropriate number of copies of the Draft EA, to the STATE's OCCL for submittal and subsequent publication. An additional copy shall be provided to the STATE for its records.

B. PHASE II – Preliminary Design and Permitting

1. Preliminary Engineering Design

A preliminary beach restoration design will be developed which takes all comments from the STATE, preliminary consultations and public outreach feedback into consideration. Prepare preliminary plans containing sufficient construction details to permit engineering review at approximately 30% of final construction drawings. Submit four (4) sets of preliminary plans and preliminary cost estimates.

2. Permits

The CONTRACTOR shall provide that STATE with a listing of all permits and/or approvals required for the project based on preliminary consultations and identify at what stage each permit can be applied for. Whenever possible, the environmental permitting shall be done in a manner which will minimize or eliminate the need for permits to be obtained for future beach restoration efforts during the time period covered by the environmental assessment. The CONTRACTOR shall prepare applications to file for all permits which can be obtained based on a preliminary design and submit these to the STATE for further processing.

C. PHASE III – Final EA, Completion of Permitting, Final Design and Production of Bid Documents

1. Final EA

- Following the 30 day public comment period, prepare a preliminary Final EA to address comments received on the Draft EA.
- Submit two copies to the STATE for review and comment.
- Make revisions in response to the STATE's comments and finalize the document for publication.
- Complete the OEQC publication form for the Environmental Notice for submittal to OEQC. Provide the required number of copies for submittal to OEQC + 1 for the STATE's OCCL.

2. Completion of Permitting

The CONTRACTOR shall apply for any permits and obtain any approvals which could not be accomplished in Phase II. Digital/electronic copies of all permit applications and supporting information shall be submitted to the STATE for its records.

3. Final Design and Production of Bid Documents

Revise contract plans and specifications to incorporate the comments received from the State, permitting agencies, and other applicable agencies. Upon approval of final design documents submit five (5) sets of final contract plans and specifications and one electronic copy on CD. Submit two (2) copies of final cost estimates, pertinent information, photos, manufacturer's literature, design computations, and quantity takeoffs.

D. PHASE IV - Services During Bidding

1. Provide full-size and ½ size mylar tracings of the contract plans, unbound original contract specifications on 20 lb paper and electronic files.



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2. For addenda that can fit on 8 ½" x 11" sheets, provide one (1) set of unbound originals on 20lb paper and electronic files.
3. For addenda larger than 8 ½" x 11" sheets, including full-sized plans, provide one (1) set of mylar tracings and electronic files.

E. PHASE V – Services During Construction and Prior to Final Acceptance

The CONTRACTOR's responsibility during construction shall be with regard to the following:

1. Review and recommend approval/disapproval of shop drawings and other contract submittals.
2. Provide four (4) sets of post contract drawings.
3. Provide reproducible mylar tracings and electronic files for as-built drawings.
4. Prior to final acceptance, the CONTRACTOR shall turn over to the STATE, the .DGN CADD files, GIS files, TIF files, and Microsoft Word (.DOC) or Microsoft Excel (.XLS) files version 2000 or higher in connection with the work performed under this CONTRACT at no extra cost to the STATE. The electronic files shall be submitted on CD. All exhibits, maps, charts, and non-text documents shall also be scanned and saved as .PDF files.
5. Submit the original hard copies (prints) and digital files (.TIF or .JPG format) of all photographs taken for the project.

IV. Public Informational Meetings

The CONTRACTOR will conduct public informational meetings to facilitate public input and comment on the Draft EA. Up to three (3) meetings are currently anticipated.

The CONTRACTOR, with the approval and assistance of the STATE, shall coordinate the following items for each meeting:

- Preparation of exhibits, data sheets, computations, and other pertinent material that the STATE requires for presentation at such meetings.
- Distribution of meeting announcements to interested groups and government agencies.
- Preparation of meeting agenda, room rental, and audio/visual equipment.
- Hiring of a moderator/facilitator, if necessary.
- Preparation of meeting minutes.
- Conduct follow-up research and coordination to address comments received at the meeting.
- Coordinate with the STATE to prepare responses to public comments, including the identification of design modification solutions.

V. Additional Services

Provide additional planning, permitting, design and consultation services as directed.

VI. Rights-of-Entry

The STATE will provide the CONTRACTOR with all necessary rights-of-entry for purposes of surveying or for gathering data and information necessary for the performance of this CONTRACT. The CONTRACTOR shall notify the STATE as early as possible of all necessary rights-of-entry required.

VII. Consultation

During the course of the work, the CONTRACTOR shall be available for consultation on this project at no extra cost to the STATE until the completion of construction. After the completion of



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construction of the project, the CONTRACTOR shall be compensated for subsequent consultation at the proposal rate.

VIII. Contractor's Responsibility

The CONTRACTOR covenants and agrees to accept responsibility and accountability for the accuracy, completeness, and adequacy of the work. All designs, plans, or reports prepared by the CONTRACTOR shall be approved by the STATE. It shall be clearly understood that the approval of such designs, plans, or reports by the STATE shall not be construed so as to relieve the CONTRACTOR of the responsibility of correcting any errors or discrepancies found in said designs, plans or reports which may become apparent or should have become apparent to the CONTRACTOR after approval has been given, nor shall such approval be construed so as to relieve the CONTRACTOR of the responsibility for conforming to all applicable design standards and criteria, laws, general plans, and established professional engineering and planning principles and practices. The CONTRACTOR at no cost to the STATE shall perform corrective work required of the CONTRACTOR.

- A. Whenever the STATE furnishes information for the guidance of the CONTRACTOR's work and/or provides actual designs and plans for portions of the project that are to be incorporated into the CONTRACTOR'S work, it is agreed that the CONTRACTOR will be responsible to verify the accuracy and adequacy of such information and/or designs and plans furnished, except as otherwise specified herein.
- B. The CONTRACTOR shall not take advantage of any apparent errors or omissions in the information and/or designs and plans furnished by the STATE. In the event the CONTRACTOR discovers such an error or omission, the CONTRACTOR shall immediately notify the STATE in writing. The STATE will then take such steps or correct any errors or omissions as may be deemed necessary.
- C. Any additional work required of the CONTRACTOR after the STATE's approval has been given because of the aforementioned errors or discrepancies, or omissions in the designs, plans, or reports of the CONTRACTOR, shall be performed by the CONTRACTOR at no further cost to the STATE.
- D. The CONTRACTOR agrees to perform the work in a professional manner with a professional attitude that shall involve a personal desire to place the STATE's interest above other considerations and to accept the professional responsibility for the services to be rendered.

IX. Information Furnished

The STATE will furnish the CONTRACTOR all pertinent information available to the STATE and pertaining to the project in order that the CONTRACTOR may be cognizant of the requirements of the STATE.

X. Changes

The STATE may, from time to time, make changes in the scope of work to be performed hereunder by the CONTRACTOR. It is possible that unanticipated problems during the construction of the project may require additional emergency assistance from the CONTRACTOR beyond this scope of services. Any increase or decrease in the amount of the CONTRACTOR's compensation, which is mutually agreed upon by and between the STATE and the CONTRACTOR, as a result of such changes and/or revisions, shall be incorporated by written amendment to this Contract.